

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
MEDFORD DIVISION

EDWARD EUGENE ALLEN,

No. 1:11-cv-67-CL

Petitioner,

v.

UNITED STATES OF AMERICA,

ORDER

Respondent.

PANNER, District Judge:

Magistrate Judge Mark D. Clarke filed a Report and Recommendation, and the matter is now before this court. See 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b). When either party objects to any portion of a Magistrate Judge's Report and Recommendation, the district court makes a de novo determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1)(C); McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F. 2d 1309, 1313 (9th Cir. 1981).

Here, petitioner objects to the Report and Recommendation, so I have reviewed this matter de novo. I agree with the Report and Recommendation that petitioner has not shown coram nobis relief is available. I also agree that even if the writ is available here, petitioner has not shown that he is entitled to relief on the merits of his ineffective assistance of counsel claim.

Petitioner challenges the recommendation that this court deny a certificate of appealability. I agree with petitioner that no certificate of appealability is required for coram nobis proceedings. See United States v. Kwan, 407 F.3d 1005, 1009-11 (9th Cir. 2005), abrogated on other grounds by Padilla v. Kentucky, 130 S. Ct. 1473 (2010),

CONCLUSION

Magistrate Judge Clarke's Report and Recommendation (#38) is adopted, except as to the certificate of appealability. This action is dismissed with prejudice.

IT IS SO ORDERED.

DATED this 29 day of November, 2012.



OWEN M. PANNER
U.S. DISTRICT JUDGE